

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Advanced Methods to Target and |) | CG Docket No. 17-59 |
| Eliminate Unlawful Robocalls |) | |
| |) | |
| Alarm Industry Communications |) | |
| Committee Petition for Clarification or |) | |
| Reconsideration |) | |
| |) | |
| American Dental Association Petition for |) | |
| Clarification or Reconsideration |) | |

REPLY COMMENTS OF THE NATIONAL OPINION RESEARCH CENTER

The National Opinion Research Center (“NORC”) filed comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Fourth Further Notice of Proposed Rulemaking (“Further Notice”).¹ These comments, along with those filed by others, demonstrate that actual notification of call blocking and immediate resolution of disputed blocking are both critical components of any form of meaningful redress. Extending safe harbor protections to blocking based on demonstrably flawed current analytics and ineffective call authentication would only exacerbate the problems caused by erroneous blocking programs and callers’ inability to discover and correct these matters.

Some commenters propose to do nothing more than they do today to protect legitimate calls from being blocked without notice or effective redress. These comments fail to acknowledge that meaningful redress is an explicit statutory requirement that can only be achieved if

¹ See Advanced Methods to Target and Eliminate Unlawful Robocalls, *3d Report and Order, Order on Reconsideration, and 4th Further Notice of Proposed Rulemaking*, CG Docket No. 17-59, FCC 20-96 (July 17, 2020), <https://docs.fcc.gov/public/attachments/FCC-20-96A1.pdf> [hereinafter “Order and Further Notice”].

transparency, prompt resolution, and accountability are present and fully functioning.²

I. PURPORTED CONCERNS ABOUT PROVIDING ACTUAL NOTIFICATION FOR BLOCKED CALLS ARE SPECULATIVE AND ADVOCACY FOR FAVORING MARKET SOLUTIONS FAILS TO COMPREHEND THE REAL HARM TO LEGITIMATE CALLERS OF BLOCKING WITHOUT NOTICE.

NORC's comments acknowledged that while the FCC has taken some steps toward implementing the required transparency and prompt redress under the TRACED Act, the steps already laid out for potential redress are mere window dressing if callers continue to lack actual notice that their calls are being blocked or by whom.³ NORC's experience has been that once aware of erosion in call completion rates, when questioned, neither service providers nor analytics companies notify callers or investigate the matter to address the underlying root cause. This effectively creates a system where the caller has no meaningful opportunity to discover or to challenge what could very well be arbitrary or incorrect call labeling.

Some commenters opposed the adoption of any notification system. They merely assert that affording callers a clear notification for blocked calls would “risk[] enabling illegitimate calling parties to adapt more quickly to anti-spoofing efforts.”⁴ Some of these commenters also opposed the Commission's proposal to require voice and blocking service providers provide a list of individually blocked calls to consumers because it would be “overly burdensome” to voice and blocking service providers and “the record does not demonstrate that consumers demand

² See 47 U.S.C. § 227(j)(1)(A) (amended by Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. 116-105, 133 Stat. 3274, § 10(b) (2019)) [hereinafter “TRACED Act”].

³ *Id.*; Order and Further Notice, paras. 16, 51.

⁴ Comments of Neustar, Inc., 2, 5 (Aug. 31, 2020), [https://ecfsapi.fcc.gov/file/108312377615530/Neustar%204th%20FNPRM%20Comments%20\(8-31-20\).pdf](https://ecfsapi.fcc.gov/file/108312377615530/Neustar%204th%20FNPRM%20Comments%20(8-31-20).pdf); see Comments of CTIA, 18 (Aug. 31, 2020), <https://ecfsapi.fcc.gov/file/1083138782461/200831%20CTIA%20SAFE%20HARBOR%20FNPRM%20-%20Comments%20-%20FINAL.pdf>; Comments of Transaction Network Services, Inc., 3 (Aug. 31, 2020), https://ecfsapi.fcc.gov/file/10901107185381/TNS%20August%202020%20Comments%20on%20Fourth%20FNPRM_Redress%20Options.pdf.

information about missed robocalls.”⁵ These commenters then proposed that the Commission should leave this issue and the issue of call blocking remedy in general to be handled by way of “market solutions.”⁶

These comments miss the mark because they ignore that doing nothing more than what is permissible today is already a “market solution” that is resulting in mislabeling and blocking of important, legitimate calls. As other commenters have observed, “[a] fraudster initiating illegal robocalls will be more likely than legitimate callers to recognize the signals, however opaque, that their call is being blocked due to the tools of their trade and their familiarity with the system.”⁷ And because many voice service providers advocating for continued reliance on “market solutions” acknowledged that some blocking tools on the market provide different forms of pre-

⁵ Comments of CTIA, 18 (Aug. 31, 2020); Comments of NCTA – The Internet & Television Association, 7-8 (Aug. 31, 2020), <https://ecfsapi.fcc.gov/file/1083149287251/083120%2017-59%20NCTA%20Comments%20on%20Call%20Blocking%20Fourth%20Further%20Notice.pdf>; see Comments of AT&T, 14-15 (Aug. 31, 2020), <https://ecfsapi.fcc.gov/file/10831189211777/8.31.2020%20AT%26T%20Call%20Blocking%20Comments.pdf>; Comments of WTA – Advocates for Rural Broadband, 13-15 (Aug. 31, 2020), <https://ecfsapi.fcc.gov/file/108310764002135/WTA%20RoboCall%20Comments%20August%202020.pdf>.

⁶ See Comments of ACA Connects, 2, 4 (Aug. 31, 2020), <https://ecfsapi.fcc.gov/file/10901299050266/200831%20-%20ACA%20Connects%20Comments%20on%20Robocalls%20Fourth%20FNPRM.pdf>; Comments of Competitive Carriers Association, 5 (Aug. 31, 2020), https://ecfsapi.fcc.gov/file/1083193005195/CCA%20Fourth%20FNPRM%20Comments_8-31-20.pdf; Comments of CTIA, 13-18 (Aug. 31, 2020); Comments of First Orion Corp., 2-3 (Aug. 31, 2020), https://ecfsapi.fcc.gov/file/108310215325954/FirstOrion_Comments8_31_2020FINAL.pdf; Comments of NCTA – The Internet & Television Association, 6 (Aug. 31, 2020); Comments of Neustar, Inc., 5-6 (Aug. 31, 2020); Comments of Transaction Network Services, Inc., 5 (Aug. 31, 2020); Comments of T-Mobile USA, Inc., 2 (Aug. 31, 2020), <https://ecfsapi.fcc.gov/file/10831373927033/T-Mobile%20Comments%20on%20Fourth%20Further%20Notice.pdf>; Comments of USTelecom – The Broadband Association, 7 (Aug. 31, 2020), <https://ecfsapi.fcc.gov/file/10831598709820/USTelecom%20-%20Call%20Blocking%204FNPRM%20Comments%20FINAL.pdf>.

⁷ National Association of Federally-Insured Credit Unions *Ex Parte* Letter, 2 (Aug. 31, 2020), <https://ecfsapi.fcc.gov/file/10831097972676/NAFCU%20Comment%20on%20FCC%20Fourth%20FNPR.pdf>.

call notification, the alleged “harm would not be worsened by providing a uniform notification.”⁸ These observations demonstrate that it is questionable whether actual notification of call blocking would facilitate *additional* illegal behavior by unscrupulous calling parties – but the lack of *any* notification definitely harms legitimate callers.

To advocate that the FCC should entrust “market solutions” with the decision regarding whether, how, and when to notify callers of blocking is simply to advocate that there be no effective requirements as to notice or redress. So is the broader advocacy that the decision on how appropriately to remediate call blocking should be made by the marketplace without oversight.

As NORC previously explained and as many commenters also have shown, there has not been any improvement in erroneous blocking since the adoption of the “call blocking by default” framework.⁹ For example, some entities that sell service within and to the call-blocking industry have managed to create new services and profit opportunities where call completion rates at times appears to correlate to the amount of money callers are willing to spend monthly on “treating” or “optimizing” their numbers.¹⁰ NORC’s own carrier has also not taken steps to protect NORC – its known customer with known use of numbering resources – both in terms of applying its third-party analytics tool to block NORC calls that are on behalf of the Centers for Disease Control and Prevention (“CDC”) or in providing any actionable information about the blocked calls to NORC.¹¹ In short, the market solution some commenters urge be continued is not working and

⁸ Comments of Noble Systems Corporation, 20-22 (Aug. 31, 2020), https://ecfsapi.fcc.gov/file/10831036789040/Noble_System_Comments-Safe_Harbor-8-31-2020.pdf.

⁹ See e.g., National Association of Federally-Insured Credit Unions *Ex Parte* Letter, 1-2 (Aug. 31, 2020).

¹⁰ See Comments of NORC, 14 (Aug. 31, 2020), <https://ecfsapi.fcc.gov/file/108310552227737/Comments%20to%204th%20FNPRM%20-%20NORC%208-31-2020.pdf>.

¹¹ See *id.* at 12.

the Commission has no basis to rely upon it without more being required.

Some proponents of reliance on “market solutions” also suggest that only missed calls which consumers inquire or demand information about should be entitled to any form of notification or remedy. This narrows the scope of the TRACED Act requirements and would be dangerously under-inclusive. This is especially the case for many types of federal government survey calls that are by their nature random and not expected and thus would not be something that a consumer would necessarily know to contact their voice provider about missing. NORC’s experience is that the majority of recipients welcome the calls about the CDC’s National Immunization Survey (“NIS”) as an opportunity to participate in improving public health data and outcomes. Jettisoning whole categories of calls from the protection of the TRACED Act simply because it will require more resources from voice service providers and analytics companies to address is unwarranted. Congress plainly required more of voice and blocking service providers, and while it may be understandable that they prefer not to have to “expend resources[] to provide the statutory required transparency to callers,”¹² that is what the statute requires. Safe harbors cannot be extended if current “market solutions” fail to provide the forms of protection that the statute guarantees.

II. PROMPT RESOLUTION OF COMPLAINTS FOR BOTH ERRONEOUSLY BLOCKED CALLS AND MISLABELED CALLS IS CRITICAL TO ENSURE A MEANINGFUL REMEDY.

The Commission’s Order already requires blocking providers to “investigate *and resolve* . . . blocking disputes in a reasonable amount of time and at no cost to the caller, so long as the complaint is made in good faith.”¹³ The Order acknowledges that “[w]hat amount of time is ‘reasonable’ may vary depending on the specific circumstances of the blocking and the resolution

¹² Comments of Noble Systems Corporation, 20-21 (Aug. 31, 2020).

¹³ Order and Further Notice, para. 55.

of the blocking dispute.”¹⁴ Some commenters go even further and argue that the Commission should not adopt any specific timeline to resolve erroneous blocking complaints and at most should only be required to “respond” to such complaints within a certain time.¹⁵ They claim that the voice service providers have every incentive to act promptly to protect legitimate calls – but experience to date demonstrates that that is simply not true.

NORC and other commenters all shared experience of significant failure on the part of the voice and blocking service providers in providing any actionable or timely information about their blocking of legitimate calls, their resolving the complaint, or their actions preventing future blocking of the same numbers.¹⁶ Without a regulatory requirement setting a concrete timeline or even a presumptive one to investigate and resolve an erroneous blocking complaint, there is no protection from the type of runaround and lack of resolution NORC has experienced.

It would also be meaningless to only “acknowledge” that a request is received without some requirement of addressing the complaint and resolving it in a timely manner.¹⁷ NORC also notes that legitimate calls are equally entitled to protection from mislabeling because mislabeling discourages consumers from answering calls and in practice can have similar blocking effect as

¹⁴ *Id.*

¹⁵ See Comments of Comcast Corporation, 6-7 (Aug. 31, 2020), [https://ecfsapi.fcc.gov/file/10831194231473/Comcast%20Comments%20on%20Robocall%20th%20FNPRM%20\(8-31-2020\).pdf](https://ecfsapi.fcc.gov/file/10831194231473/Comcast%20Comments%20on%20Robocall%20th%20FNPRM%20(8-31-2020).pdf); Comments of Competitive Carriers Association, 6 (Aug. 31, 2020); Comments of NCTA – The Internet & Television Association, 8 (Aug. 31, 2020); Comments of Neustar, Inc., 5-5 (Aug. 31, 2020); Comments of the Voice on the Net Coalition, 3 (Aug. 31, 2020), <https://ecfsapi.fcc.gov/file/10831053784698/VON%20Fourth%20FNPRM%20Comments%20FINAL%208%2031%202020.pdf>; Comments of T-Mobile USA, Inc., 6 (Aug. 31, 2020); Comments of Transaction Network Services, Inc., 5 (Aug. 31, 2020).

¹⁶ See also Comments of Twilio, 4 (Aug. 31, 2020), <https://ecfsapi.fcc.gov/file/10831069415145/8-31-2020%20Twilio%20Fourth%20FNPRM%20Comments.pdf>.

¹⁷ See also The Insights Association *Ex Parte* Letter, 3 (Aug. 31, 2020), <https://ecfsapi.fcc.gov/file/108311165718628/IA-comments-to-FCC-on-call-blocking-safe-harbor-8-31-20.pdf>.

provider-blocked calls. For example, NORC’s investigation into the material drop of its NIS call answering rate since mid-2019 suggests that the disruption of its call completion rate is the result of both erroneous blocking and mislabeling. NORC also has reason to believe that mislabeling of a call by its originating carrier or any intermediate voice service providers could result in blocking by analytics employed by a terminating carrier. For these and other reasons articulated by many commenters, NORC supports the proposal that erroneous blocking and mislabeling complaints should be investigated and resolved within one to three business days.¹⁸

III. THE COMMISSION SHOULD NOT EXTEND THE SCOPE OF THE SAFE HARBOR AT THIS TIME AND SHOULD HOLD VOICE SERVICE PROVIDERS ACCOUNTABLE FOR REPEATED BLOCKING IN ERROR.

NORC supports the view expressed by many commenters that allowing voice service providers to block calls based in whole or in part on caller ID authentication information is premature because the SHAKEN/STIR framework has not been widely implemented and existing blocking analytics are flawed in many respects.¹⁹ In particular, as the Commission’s “call blocking

¹⁸ See Corrected Comments of the American Bankers Association, ACA International, American Association of Healthcare Administrative Management, American Financial Services Association, Credit Union National Association, Consumer Bankers Association, Mortgage Bankers Association, National Association of Federally-Insured Credit Union, National Association of Nationally-Insured Credit Unions, National Retail Federation, and Student Loan Servicing Alliance, 10-17 (Sept. 1, 2020), https://ecfsapi.fcc.gov/file/1090100863346/JointTrades_CommentLetter_FourthFNPRM_2020_08_31_final2.pdf [hereinafter “Joint Associations Comments”]; Enterprise Communications Advocacy Coalition *Ex Parte* Letter, 2-3 (Aug. 31, 2020), <https://ecfsapi.fcc.gov/file/10831870607361/ECAC%20Final%20Comments%20Aug%2031%202020%2017-59.pdf>; National Association of Federally-Insured Credit Unions *Ex Parte* Letter, 1, 4-5 (Aug. 31, 2020); Comments of Securus Technologies, LLC, 7-8 (Aug. 31, 2020), [https://ecfsapi.fcc.gov/file/108311047908182/FINAL%20-%20Securus%20Comments%20re%20Fourth%20FNPRM%20in%20Robocall%20Proceeding%20\(8-31-2020\).pdf](https://ecfsapi.fcc.gov/file/108311047908182/FINAL%20-%20Securus%20Comments%20re%20Fourth%20FNPRM%20in%20Robocall%20Proceeding%20(8-31-2020).pdf); Reply Comments of Telnyx LLC, 2 (Aug. 31, 2020), <https://ecfsapi.fcc.gov/file/10831194455850/Telnyx%204th%20Robocalling%20FNPRM%20Comments%20-%20August%2031%2C%202020.pdf>; Comments of Twilio, 4-5 (Aug. 31, 2020).

¹⁹ See Comments of the Cloud Communications Alliance, 7-8 (Aug. 31, 2020), https://ecfsapi.fcc.gov/file/10831701707248/CCAsafeharbor%20comments_Clean%202.pdf; Comments of INCOMPAS, 4, 11 (Aug. 31, 2020), <https://ecfsapi.fcc.gov/file/109012343124451/INCOMPAS%20Comments%20->

by default” framework is premised upon blocking based on “reasonable analytics,” the framework should logically and equitably require that voice service providers seeking to avail themselves to the protection of a safe harbor be fully prepared to demonstrate “reasonableness” of the blocking analytics they choose to use. When blocking analytics do not yield reasonable results – such as when the result is repeated blocking of calls that the voice service providers have actual notice are legitimate calls originated by their own customers – the voice service provider cannot credibly argue that the analytics being applied are “reasonable” and whatever redress they are applying is actually meaningful.²⁰ To more directly focus on the problem of “widespread blocking of wanted calls” and to hold accountable any behavior that deprives callers of meaningful redress, NORC joins other commenters in urging the Commission to clarify that voice service providers should lose their safe harbor protection if they continue to block calls from the same caller using the same number after having resolved an erroneous blocking complaint in that caller’s favor.²¹

IV. CONCLUSION

It would be arbitrary for the Commission to extend safe harbors to provide voice service providers with more protection than they have currently for call blocking based on flawed analytics without first requiring actual notice of call blocking be given to a caller, as well as immediate redress for any erroneous call blocking or mislabeling. The last year of experience demonstrates that “market solutions” thus far have failed to protect the legitimate interests of

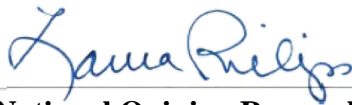
[%20Fourth%20FNPRM%20\(17-59\).pdf](#); Joint Associations Comments, 17-18, Comments of NCTA – The Internet & Television Association, 4-5 (Aug. 31, 2020); Comments of Securus Technologies, LLC, 5-7 (Aug. 31, 2020); Comments of the Voice on the Net Coalition, 1-2 (Aug. 31, 2020).

²⁰ See also National Association of Federally-Insured Credit Unions *Ex Parte* Letter, 3-4 (Aug. 31, 2020); Comments of Noble Systems Corporation, 30 (Aug. 31, 2020); Comment of Professional Association for Customer Engagement, 4 (Aug. 31, 2020), <https://ecfsapi.fcc.gov/file/1083168476953/PACE%204th%20NPRM%20-%20VSP%20Safe%20Harbor%20-%20FINAL.pdf>.

²¹ Order and Further Notice, para. 50.

lawful callers to complete important calls. The Commission must act. It cannot abandon the field to carriers and third-party providers to determine their own subjective criteria for what they deem to be “reasonable analytics” and what resources they would deploy to ensure that blocking is immediately discoverable and that complaints can be promptly addressed and remedied. NORC continues to support the FCC’s goal to establish a reliable, transparent system for the successful blocking of spam, illegal and telemarketing calls placed without prior consent. But the foundation of that system is transparency – which requires clear notification, prompt redress, and accountability.

Respectfully submitted,



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